

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION FIVE**

WHOLE FOODS MARKET GROUP, INC.¹
Employer

and

Case 5-RC-15524

UNITED FOOD AND COMMERCIAL
WORKERS UNION, LOCAL 400
Petitioner

DECISION AND DIRECTION OF ELECTION

The sole issue here is whether the petitioned-for single-location unit is appropriate. There is no history of collective bargaining at the petitioned-for location or at any of the other locations involved in this proceeding. For the reasons that follow in this decision, I find the petitioned-for single location unit constitutes an appropriate unit for bargaining. There are approximately 113 employees in this unit.

The Employer operates a chain of retail stores located throughout the United States, including its store located in Falls Church, Virginia (also referred to as Tysons Corner, Virginia or the “Tysons” store), where it sells food, groceries, and other goods. The Petitioner seeks to represent “all full-time and regular part-time employees employed by the Employer at its store located at 7511 Leesburg Pike, Falls Church, Virginia; excluding store team leaders, assistant store team leaders, second assistant store team leader, team leaders, associate team leaders, human resources associate, specialty team leader, administrative/office clerical employees, professional employees, store systems integrator, sign maker, marketing specialist, director of operations, category managers, coordinators, guards, and supervisors as defined in the Act.”

The Petitioner contends that the petitioned-for, single-facility unit is an appropriate unit. The Petitioner further contends that the Employer has failed to rebut the presumption of the appropriateness of a single store unit given the substantial autonomy of the Employer’s individual stores with regard to labor relations matters.

The Employer stipulated at the hearing to the appropriateness of the composition of the above-described unit; however, it contends as to unit scope that a single-facility unit is inappropriate and that the appropriate unit must also include employees at its stores located in Annandale, Arlington, Reston, Springfield, and Vienna, Virginia (along with the Tysons store collectively referred to as the “Northern Virginia” stores), totaling approximately 789

¹ The name of the Employer appears as amended at the hearing.

employees.² The Employer contends that the geographic proximity of the six stores: centralized control of labor relations; attenuated authority of local store management in favor of centralized control; uniformity of wages; benefits; uniforms; jobs; and the high incidence of inter-store transfer of employees overcomes the presumption of a single-store unit.

The Employer presented the only witness at the hearing, Regional Human Resources Coordinator for the Mid-Atlantic Region Dave Gearhart. Gearhart oversees all human resources functions within the Employer's Mid-Atlantic Region (Region), which includes facilities in New Jersey, Pennsylvania, District of Columbia, Maryland, and Virginia.³

THE EMPLOYER'S OPERATIONS

According to Gearhart's job description, he coordinates all aspects of human resources and team member (employees) services for the Region. Gearhart works out of the Employer's regional office located in Rockville, Maryland.⁴ The Employer also has two directors of operations,⁵ nine category managers,⁶ and at least five non-product coordinators⁷ who ensure each store in the Region is functioning to regional standards. The parties stipulated at the hearing that there are nine departments or teams in each store region-wide: produce, specialty, nutrition, meat, seafood, customer service, bakery, prepared foods, and grocery. There is a category manager for each department region-wide. The company's job description for category managers state that they are ultimately responsible for developing team product mix, pricing strategy, promotional plans, and merchandising direction. According to Gearhart, category managers determine the products sold in each store and where those products are displayed. Pricing of products is established by the Region. Category managers also determine when a product goes on sale and when a store ceases selling a product. Further, Gearhart testified that the directors of operations, category managers, and coordinators should visit each store in the Region once each calendar quarter to inspect operations to make sure they are up to regional standards. However, Gearhart could not confirm that the category managers (and apparently nor the directors of operations or coordinators) actually visit the stores every quarter.

Each store in the Region, including Tysons, has a store team leader, an assistant store team leader, a second assistant store team leader, and a team leader and associate team leader for each of the nine teams or departments listed above.⁸ According to a job description provided by the Employer, a store team leader plans and directs every aspect of store operations. A store

² There are approximately 132 employees at the Vienna store; 199 at Arlington; 111 at Reston; 123 at Springfield and 111 at Annandale.

³ The Employer operates a total of 23 stores in the Mid-Atlantic Region, including the six Northern Virginia stores, six stores in Maryland, and three stores in the District of Columbia.

⁴ The record is silent as to how often, if at all, Gearhart visits the Tysons store or any store in the Region.

⁵ Sam Park serves as the director of operations over the southern part of Maryland, District of Columbia, and Virginia, including the Northern Virginia stores. Park reports to regional president Lee Valkenaar.

⁶ Category managers report directly to the director of category management, who reports to the VP of category management in Rockville, Maryland.

⁷ There are separate non-product coordinators who deal with human resources, customer service, information systems, marketing, and construction. Non-product coordinators report directly to the regional president.

⁸ The parties stipulated at the hearing that the above individuals are supervisors within the meaning of Section 2(11) of the Act.

team leader's responsibilities include the following: hire, train, develop and counsel all store leaders in a manner that builds and sustains high-performance leadership and minimizes turnover; assist team leaders with making hiring and termination decisions for their teams; and uphold company policies fairly and equally. The assistant team leader assists the store team leader in planning and directing all aspects of store operations, including team members development and training.

A team leader's responsibilities include, among other things, "Team Member hiring and supervision, buying and merchandising department products, managing financials [and] controlling inventory ..." The store team leader reports to the director of operations. An associate team leader assists the team leader in the daily operation of the department, including training and supporting team members. According to Gearhart, all employees who work in the Northern Virginia stores have the same job titles or classifications. There is very limited evidence in the record concerning what these job titles or classifications are, or employee functions and skills.

All of the Northern Virginia stores have the same store hours, which are set by the regional office. Each store determines its employees' schedules and the amount of overtime worked, even if the overtime exceeds the budget. If an employee wants to change his shift or is going to be absent or late, he reports this directly to his team leader. Gearhart testified that he might become involved in approving absences if an employee's absences become excessive or if there are federal law implications. Gearhart could not recall any specific instances where he has had to become involved in employee leave issues.

All employees region-wide receive the same Employer work rules, procedures, and benefit explanations. This includes the company's General Information Guide (GIG), which sets forth employees' terms and conditions of employment, such as scheduling, overtime, pay, benefits, leave of absences, and the company's disciplinary policy.

Payroll is prepared by each store and is then processed at the Employer's Austin, Texas office. For example, the Tysons store submits its payroll to the Austin, Texas office, and Austin sends Tysons the paychecks. Any adjustments to employees' pay are done at the store level.

All employees in the Northern Virginia stores and region-wide wear the same uniforms -- either black aprons for those who work in front of the store or white smocks for those in food preparation.

HIRING/STAFFING PROCESS

Hiring is done at the store level and need not be approved at the Regional level. Each store's staffing level is determined by its sales, size, and volume. If the store team leader needs to exceed the staffing level, Gearhart testified he must get authorization from the director of operations. Nation-wide job openings are posted in all stores.

WAGES AND BENEFITS

Store team leadership, specifically the team leaders, can independently set employee wage levels. However, Gearhart testified that they must keep wages within the Employer's (unspecified) guidelines.⁹ Store management also determines employee wage increases. The GIG states that a wage increase can only occur with a job dialogue or performance review. Employee performance reviews are completed at the store level. The GIG indicates that whether an employee receives a wage increase is up to the team leader. Gearhart confirmed that wage increases are handled by store or team leaders. Gearhart also testified that store leadership can initiate employee wage reductions but he ultimately approves them. Gearhart could not recall any instance where he disapproved of a wage reduction.

Fringe benefits (medical, dental, vision, 401(k), etc.) are the same for all employees region-wide. Employees can also accumulate benefit hours, which include sick, personal, and vacation hours, based on years of service. According to Gearhart, an employee continues to accrue benefit hours despite working at multiple Northern Virginia stores. Leave of absences and vacation are approved at the store level. The Employer also has a gain-sharing program, where part of a team's profit is shared with employees. An employee's gain-sharing amount is determined at the team or department level and varies team by team. The labor costs or budget for each department is determined at the regional level while a department's labor deficit is monitored at the store level.

DISCIPLINE POLICY

Store management can independently discipline employees and determine the type of discipline within the guidelines set forth in the company's GIG. Specifically, team leaders can write up employees for various offenses, such as failing to perform duties and safety violations, without further approval. Gearhart testified that he signs off on all terminations, and there are times where he will conduct an independent investigation at a store prior to terminating an employee. Gearhart recalled twice conducting investigations at the Tysons store within the last two years. In both instances, Gearhart decided to terminate the individuals despite the store team leader's recommendation that the individuals not be terminated.¹⁰ Gearhart also testified that he independently investigates demotions and layoffs before authorizing them.¹¹ According to Gearhart, directors of operations, category managers, and nonproduct coordinators can discipline employees without the store team leaders involvement. Gearhart had no knowledge of a category manager ever disciplining an employee directly. In addition, the record contains no evidence of any director of operations or coordinator disciplining a store employee.

⁹ Under "Your Pay" in the company's GIG, it states that there is a compensation guidelines table at each store which lists minimum and maximum rates of pay by job category.

¹⁰ One individual, an employee, falsified payroll sheets, and the other, a supervisor, lied during the investigation.

¹¹ Gearhart could not recall overruling any demotion determinations at the Tysons store in the last two years. He testified that he has refused a demotion request from one of the Northern Virginia stores before but provided no details. Gearhart recalls one instance at Tysons where he overruled the decision to layoff an employee.

GRIEVANCES

Gearhart testified that employees can take grievances directly to him. It is unclear under what circumstances an employee grievance would come to Gearhart or if the employer has any formal grievance procedure. However, it appears that store team leadership handles employee issues or grievances on a daily basis. EEO issues are handled directly by Gearhart.

TRAINING/ORIENTATION

Each store conducts new employee orientation and training. The training material is prepared by the Region and is used in all regional stores. Trainers are trained at the regional office.¹²

TRANSFERS

The Employer presented evidence of employee interchange between the Tysons store and the other Northern Virginia stores.¹³ From about January 2001 to February 2003, 23 Tysons employees worked at other Northern Virginia stores during a total of 559 two-week pay periods. During the same time period, 34 employees of other Northern Virginia stores worked at the Tysons store during a total of 207 pay periods. Notably, the Employer failed to present any evidence that showed the number of hours, shifts or days each employee worked at another store during any particular pay period. Further, Gearhart had no specific knowledge about the circumstances surrounding the temporary transfers, but stated that it is the company's policy to only transfer employees on a voluntary basis. Gearhart testified that each employee has a home store but may work at different stores for various reasons, including for training or to cover a shift. Sometimes the company seeks employees to cover shifts at other stores; however, there are no adverse consequences if an employee refuses to work at another store. The store at which the employee is working is responsible for paying that employee.

The Employer also presented evidence of 17 permanent transfers from January 2001 to February 2003. Nine of these transfers were from the other Northern Virginia stores to the Tysons store, and 8 were Tysons employees who transferred to other Northern Virginia stores. For permanent transfers between stores, the two store leaders must be in agreement.

Gearhart testified that within the last two years, a Tysons store leader temporarily transferred to another store. No assistant store team leader, team leader or assistant team leader has transferred from Tysons to another store during this same period. Also, within the last two years, store team leaders from the Springfield store, Bethesda and Silver Spring, Maryland stores temporarily transferred to the Tysons store when the store leader there stepped down.¹⁴ Gearhart said that coverage of the Tysons store was not limited to the other stores in Northern Virginia.

¹² The record is silent as to whether trainers are store or regional employees.

¹³ The Employer submitted into evidence three separate exhibits which showed the following: employees from other Northern Virginia stores who have worked in Tysons (Ex. 11); Tysons employees who have worked in other Northern Virginia stores (Ex. 12); and permanent transfers between the Northern Virginia stores (Ex. 13).

¹⁴ Once again, the Employer failed to provide any evidence as to the length of time each outside store team leader covered the Tysons store.

GEOGRAPHIC PROXIMITY OF STORES

The Employer presented a map of the Northern Virginia stores which purports to show the mileage between the Tysons store and the other five stores in Northern Virginia.¹⁵ According to the map, the Vienna, Arlington and Reston stores are 6, 8, and 10 miles, respectively, from the Tysons store. The Annandale and Springfield stores are each 9 miles from the Tysons store. Gearhart testified that the driving times between the Tysons store and the other Northern Virginia stores range from five to thirty minutes. The closest store to Tysons is Vienna and the furthest is Springfield.¹⁶

ANALYSIS

Section 9(b) of the Act states the Board “shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof” The statute does not require that a unit for bargaining be the only appropriate unit, or the ultimate unit, or the most appropriate unit. Rather, the Act only requires that the unit be “appropriate.” *Overnite Transportation Co.*, 322 NLRB 723 (1996); *Parsons Investment Co.*, 152 NLRB 192, fn. 1 (1965); *Morand Bros. Beverage Co.*, 91 NLRB 409 (1950), enf’d. 190 F.2d 576 (7th Cir. 1951). A union is, therefore, not required to seek representation in the most comprehensive grouping of employees unless “an appropriate unit compatible with that requested does not exist.” *P. Ballantine & Sons*, 141 NLRB 1103 (1963); *Bamberger’s Paramus*, 151 NLRB 748, 751 (1965); *Purity Food Stores, Inc.*, 160 NLRB 651 (1966). It is well settled that there is more than one way in which employees of a given employer may appropriately be grouped for purposes of collective bargaining. *General Instrument Corp. v. NLRB*, 319 F.2d 420, 422-23 (4th Cir. 1962), cert. denied 375 U.S. 966 (1964); *Mountain Telephone Co. v. NLRB*, 310 F. 2d 478, 480 (10th Cir. 1962).

The Board has long held that a single location unit is presumptively appropriate for collective bargaining. *D&L Transportation*, 324 NLRB 160 (1997); *J&L Plate*, 310 NLRB 429 (1993); *Bowie Hall Trucking*, 290 NLRB 41, 42 (1988). The presumption in favor of a single location unit can be overcome “by a showing of functional integration so substantial as to negate the identity of the single facility.” *Id.* at 41. The factors that the Board examines in making this determination are centralized control over daily operations and labor relations; extent of local autonomy; similarity of skills, functions, and working conditions; extent of employee interchange; geographic proximity; and bargaining history, if any. *New Britain Transportation Co.*, 330 NLRB 397 (1999); *Rental Uniform Service*, 330 NLRB 334 (1999). The burden is on the party opposing the petitioned-for single facility unit to present evidence sufficient to overcome the presumption. *J&L Plate*, supra. Further, as the Board noted in *Penn Color, Inc.*, 249 NLRB 1117, 1119 (1980), the party seeking to overcome the presumptive appropriateness of a single-plant unit must show that the day-to-day interests of the employees at the location sought by the other party have merged with those of the employees at the other locations at issue.

¹⁵ Gearhart testified that the mileage quoted on the map is from a chart previously prepared by the Employer.

¹⁶ According to Gearhart, the three stores located in the District of Columbia are all less than ten miles away from the Arlington store.

I find that the Employer has failed to present evidence sufficient to overcome the presumptive appropriateness of a single-facility unit. Although the Employer's operation is centralized with respect to establishing most personnel and labor relations policies, including wage ranges and benefits, payroll, budgeting, discipline, and training materials, the Board has held that centralized administration is not the primary factor it will consider in determining whether employees at two or more facilities share a community of interest. *Neodata Product/Distribution*, 312 NLRB 987, 989 fn.6 (1993). The record reveals that store management at the Tysons store, and at every regional store, has significant local autonomy over its labor relations. In this regard, store team leadership hires, schedules, orientates, trains, evaluates, rewards, disciplines, and sets wages for employees independent of regional management. Store team leadership can also initiate discharges, layoffs, and demotions. Further, store leaders set employee wages, grant wage increases or impose wage reductions, handle employee grievances, and approve leave and shift changes. This significant day-to-day involvement in a variety of personnel and labor relations matters demonstrates meaningful local autonomy and participation in matters directly affecting the petitioned-for employees' work environment. See *Rental Uniform Service*, 330 NLRB 334 (1999); *Red Lobster*, 330 NLRB 908 (1990).

The Employer further failed to rebut the single-store unit presumption by a showing of significant employee interchange involving the Tysons store. Although the Employer presented facially numerous instances of employee interchange between Tysons and the other Northern Virginia stores, the evidence lacks any context as the Employer failed to present the number of hours, shifts or days the employee worked during the specified pay period(s) at another store. In addition, the Employer presented its evidence of interchange in aggregate form. The presumption of the appropriateness of a single-facility unit has not been rebutted where an employer's interchange data is represented in aggregate form rather than as a percentage of total employees. *New Britain Transportation*, supra at 400, citing *Dunbar Armored, Inc. v. NLRB*, 186 F.3d 844, 849 fn.5 (7th Cir. 1999). Nonetheless, in analyzing the Employer's evidence, the amount of interchange between the Northern Virginia stores appears to be minimal. In this regard, only 57 of the total 789 employees at the six stores, or 7.2%, were involved in temporary interchange over an approximate 26-month period. In addition, a clear majority of the employees (37 of 57) involved in these inter-store transfers only worked in another store for four pay periods or less during this 26-month time period. While the aggregate number of pay periods in which transfers occurred during this time period may appear to be substantial, I cannot make this determination without any idea of the actual length of time each employee worked at another store.¹⁷ Moreover, there has been little permanent interchange with only 17 employees, or barely 2% of the total employees in Northern Virginia, permanently transferring between the Tysons store and the other Northern Virginia stores over more than two years.

The record is also void of evidence of any consistent, meaningful contact between Tysons employees and store team leaders at the other Northern Virginia stores. Indeed, although the Employer presented evidence of three temporary transfers of store team leaders to the Tysons

¹⁷ At the very most, the 559 pay periods in which Tysons employees worked at other stores, divided by the approximately 6,328 available pay periods during the time period involved (113 employees times 54 pay periods) shows a temporary transfer rate of less than 9%. Of course, many of these temporary transfers may have been for far less than an entire pay period, so the actual transfer rate likely was even far smaller than 9%.

store within the last two years, only one of those individuals was from another Northern Virginia store. Similarly, Gearhart could only recall one instance in the last two years where a Tysons store team leader temporarily transferred to another store. Further, it appears the director of operations, category managers, and nonproduct coordinators only visit the Tysons store four times a calendar year.

While the other Northern Virginia stores are not geographically remote from the Tysons store, nor are they particularly close. Also, there are other regional stores located in the District of Columbia that are within equivalent proximity of the Northern Virginia stores. Moreover, the Employer has failed to provide any evidence of centralized labor relations unique to the Northern Virginia stores vis-à-vis the other stores in the Mid-Atlantic Region. Significantly, there is no evidence that any of the Northern Virginia stores are functionally integrated.

The instant case is distinguishable from *Big Way Super Market*, 226 NLRB 180 (1976) and *V.I.M. Jeans*, 271 NLRB 1408 (1984), cases cited by the Employer in its brief for the appropriateness of a multi-store unit over a single-store unit. In *Waipahu Super Mart*, the Board found a multi-store unit to be appropriate despite the individual store manager's ability to hire, fire, schedule, discipline, promote, select for layoffs, and recall employees. However, there, unlike here, the coordinators in charge of various departments visited each store approximately 12 times a month; the application process was centralized; and, significantly, some of the stores involved were functionally integrated.¹⁸ *Big Way Super Market*, supra at 180-181. In *V.I.M. Jeans*, the Board found that the individual store manager's autonomy was severely circumscribed by the employer's president and two other supervisors who supervised all nine of the stores at issue. There, the president and two supervisors shuttled between the stores on a daily basis; reviewed personal matters including the hiring and firing of employees; and the president was involved in all final disciplinary warnings. *V.I.M. Jeans*, supra at 1408-1409. Here, regional management only occasionally visits the Tysons store, and store leadership may issue disciplinary action short of discharge and take other personnel actions on a daily basis without regional approval.¹⁹

In view of the local autonomy at each store, including the Tysons store; the lack of clear and substantial employee interchange; the absence of any bargaining history among the unit employees; the geographic separation between facilities; and the fact that no labor organization seeks to represent the employees on a broader basis, I find that the Employer has not met its burden of showing that a single-store unit here is inappropriate. Therefore, based on the above and the record as a whole, I find that the petitioned-for single-store unit is an appropriate unit. See *Foodland of Ravenswood*, 323 NLRB 665 (1997); *Renzetti's Market, Inc.*, 238 NLRB 174 (1978).

¹⁸ For example, one of the employer's grocery stores sold mainly prepackaged items and, thus, the breaking down of bulk grocery and produce, and the cutting and wrapping of meat and fish, were done by unit employees at the employer's central operations, which was also included in the multi-store unit. *Waipahu*, supra at 181.

¹⁹ The Decision and Direction of Election in *Kroger Limited Partnership d/b/a Hilander Foods*, Case 33-RC-4715, cited by the Employer and attached to its post-hearing brief, is of no precedential value. In that case, the Acting Regional Director found a petitioned-for, single-store unit not appropriate, but on November 15, 2002, the Board granted the petitioner's request for review of that finding. Moreover, that case is factually distinguishable.

CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accord with the discussion above, I find and conclude as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is an employer as defined in Section 2(2) of the Act and is engaged in commerce within the meaning of Sections 2(6) and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner, United Food and Commercial Workers Union, Local 400, a labor organization as defined in Section 2(5) of the Act, claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.
5. The parties stipulated that the Employer is a Delaware corporation involved in the retail sale of foods, groceries, and other goods at various locations throughout the United States, including its store located at 7511 Leesburg Pike, Falls Church, Virginia. During the past 12 months, a representative period, the Employer derived gross revenues in excess of \$500,000 and during that same time purchased and received goods valued in excess of \$5,000 directly from points located outside of the Commonwealth of Virginia.
6. The parties stipulated that the following employees are supervisors within the meaning of Section 2(11) of the Act and are excluded from the unit:
7. I find the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time employees employed by the Employer at its Falls Church, Virginia (Tysons Corner) location; excluding store team leaders, assistant store team leaders, second assistant store team leader, team leaders, associate team leaders, human resources associate, specialty team leader, administrative/office clerical employees, professional employees, store systems integrator, sign maker, marketing specialist, director of operations, category managers, coordinators, guards, and supervisors as defined in the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by **UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 400**. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, National Labor Relations Board, Region 5, 103 South Gay Street, Baltimore, MD 21202, on or before **MARCH 14, 2003**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (410) 962-2198. Since the list will be made available to all parties to the election, please furnish a total of two copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on **MARCH 21, 2003**. The request may not be filed by facsimile.

(SEAL)

/s/WAYNE R. GOLD

Dated: **MARCH 7, 2003**

Wayne R. Gold, Regional Director
National Labor Relations Board
Region 5

440-1720-0133